

DECISION



24101
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-210289

DATE: February 1, 1983

MATTER OF: Welbilt Electronic Die Corporation

DIGEST:

Absent showing of fraud or bad faith, GAO will not consider protest that procurement for three-horsepower engines should have been negotiated with protester under section 8(a) of Small Business Act, because decision to award contract under section 8(a) is within the discretion of contracting officials.

Welbilt Electronic Die Corporation (Welbilt) protests the decision of the Department of the Army to competitively procure three-horsepower engines under invitation for bids DAAJ09-83-R-A225.

We dismiss the protest.

Welbilt is currently producing six-horsepower engines for the Army under the Small Business Administration (SBA) 8(a) program. Welbilt contends that the Army led Welbilt to believe that its requirements for three-horsepower and one and one-half horsepower engines would also be reserved for Welbilt under the § 8(a) program.

Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (Supp. III, 1979), authorizes the SBA to enter into contracts with any Government agency with procuring authority and to then subcontract performance of the contracts to socially and economically disadvantaged small businesses. The statute also authorizes the procuring agency's contracting officer to award contracts to SBA "in his discretion." In light of this broad discretion given contracting officers, we do not review an agency decision to set aside or not set aside contracts for 8(a) award, unless there is a showing of fraud or bad faith on the part of Government officials. Wakon Redbird & Associates, B-205995, February 8, 1982, 82-1 CPD 111. Welbilt does not allege that the Army's decision to competitively procure the three-horsepower engines resulted from fraud or bad faith.

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Protest dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel